654.

SUPREME COURT OF THE UNITED STATES.

No. 142.

EDMUND T. H. GIBSON, PLAINTIFF IN ERROR,

vs.

BRADFORD B. STEVENS.

IN ERROR TO THE CIRCUIT COURT U. S., FOR THE DISTRICT OF INDIANA.

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J. & G. S. Gideon, printers.

Be it remembered, that among the records of the circuit court of the United States, for the seventh judicial circuit and district of Indiana, there is a case, a true, full, and complete transcript of which is in the words and figures following, to wit:

Pleas of the circuit court of the United States of America, for the seventh judicial circuit and district of Indiana, began and holden at Indianapolis, in said district, before the Hon. John McLean, one of the justices of the Supreme Court of the United States, and the Hon. Elisha M. Huntington, district judge of the United States for the district of Indiana, on Monday, the eighteenth day of May, in the year of our Lord one thousand eight hundred and forty-six.

EDMUND T. H. GIBSON,
vs.
BRADFORD B. STEVENS. } Replevin.

Be it remembered, that on the tenth day of May, in the year of our Lord one thousand eight hundred and forty-four, come said plaintiff, by Zebulon Baird, esq., his attorney, and filed in the clerk's office of said court his certain affidavit, in writing, in the words and figures following, to wit:

STATE OF INDIANA,
Tippecanoe county, ss:

Personally appeared before me, the undersigned, a justice of the peace within and for the county of Tippecanoe, William Hoyt, agent of Edmund T. H. Gibson, of the city of New York, on this seventh day of May, A. D. eighteen hundred and forty-four, and, after being duly sworn, upon his solemn oath deposeth and saith, that the said Edmund T. H. Gibson is the owner of the following described personal property, and that he, the said Gibson, is lawfully entitled to the possession of the same, to wit, three hundred and fifty barrels of mess pork, and two hundred barrels of flour; that the said personal goods and chattels have been wrongfully taken, and are now unlawfully detained from the said Gibson, by one Bradford B. Stevens, at and within the said county of Allen, in the said State of Indiana; and that the said personal property has not been so taken as the property of said Gibson, for any tax or assessment against the said Gibson, levied by any law of the said State of Indiana, nor seized under, or by virtue of, any execution or attachment against the goods and chattels liable to execution of the said Gibson; and that the said personal property is of the value of three thousand and six hundred dollars; and further saith not,

WILLIAM HOYT.

Subscribed and sworn before me, this seventh day of May, eighteen hundred and forty-four.

ELIJAH BEMISS, *J. P.* [SEAL.]

STATE OF INDIANA,
Tippecanoe county, ss:

I, Mark Jones, clerk of the Tippecanoe circuit court, in the State of Indiana, do hereby certify, that Elijah Bemiss, esq., before whom the within affidavit appears to have been made, was, at the date thereof, an acting justice of the peace within and for said county, duly elected, commissioned, and qualified according to law; and, as such, all his acts are entitled to full faith and credit.

In testimony whereof, I have hereto set my hand, and affixed the seal of said court, at office, in Lafayette, this seventh day of May, eighteen hundred and forty-four.

MARK JONES, *Clerk.*
Per JASPER BRADLY, *Dep.*

And on the same day the said plaintiff filed his certain precipe, in the words and figures following, to wit:

EDMUND T. H. GIBSON, a citizen of the State of New York,
vs.
BRADFORD B. STEVENS, a citizen of the State of Indiana.
} Replevin.

In the United States circuit court for the seventh circuit and district of Indiana, of the May term thereof, eighteen hundred and forty-four. Damages one thousand dollars. Issue a writ of replevin pursuant to the statute.

ZEBU. BAIRD, *For pl'ff.*

And afterwards, to wit, on the tenth day of May, in the year of our Lord one thousand eight hundred and forty-four, there was issued from said clerk's office, in said case, in due form of law, under the seal of said court, a writ of replevin in said case, directed to the marshal, &c., commanding, &c., returned, &c.; and which is in the words and figures following, to wit:

The President of the United States of America, to the marshal of the district of Indiana, *greeting:*

Whereas Edmund T. H. Gibson, a citizen of the State of New York, has filed in the clerk's office of the circuit court of the United States, for the district of Indiana, an affidavit, alleging that Bradford B. Stevens, a citizen of the State of Indiana, has wrongfully taken, and does unlawfully detain from the said Gibson, the following described personal property, to wit, three hundred and fifty barrels of mess pork, and two hundred barrels of flour, at the district aforesaid, of the alleged value of three thousand and six hundred dollars.

You are, therefore, hereby commanded to replevy the said goods and chattels, by taking them into your custody, and deliver the same to the said Gibson, if he will satisfy you by giving bond, with sufficient sureties, as required by law, to duly prosecute his said action of replevin with effect, and without delay, and to return the aforesaid goods and

chattels thus replevied, if return thereof shall be adjudged, and to pay all such sums of money as may be recovered against him hereupon; and also, in case you replevy said goods and chattels, or any part thereof, that you summon the said Stevens to appear before the circuit court of the United States for the district of Indiana, to be holden before the judges thereof at Indianapolis, in said district, on the third Monday in May, A. D. eighteen hundred and forty-four, to answer unto the said Gibson in a plea whereof he wrongfully took, and does unlawfully detain from the said Gibson, the personal goods and chattels aforesaid, to the damage of the said Gibson, as is said, of one thousand dollars; and have you then there this writ.

Witness honorable Roger B. Taney, chief justice of the Supreme Court of the United States of America, and the seal of the cir-
[L. S.] cuit court of the *of the* United States of America, for the district of Indiana, hereunto affixed, at Indianapolis, this tenth day of May, A. D. eighteen hundred and forty-four.

HORACE BASSET, *Clk.*

Which said writ was then and there delivered to the marshal of said district, and which was by him afterwards duly returned to the office whence the same issued, indorsed thus:

"Received this writ the thirteenth day of May, A. D. eighteen hundred and forty-four. As by the within writ commanded, I have this day replevied out of the possession of the said Bradford B. Stephens the said three hundred and fifty barrels of mess pork, the said two hundred barrels of flour therein mentioned, by taking the same into my possession. And I have, as by the within writ commanded, delivered to the said Edmund T. H. Gibson, plaintiff in this suit, the said personal property so replevied, he, the said Gibson, having given bond and security, as in such cases by the statute required; which said bond I herewith return, as part of my proceedings in the premises. And as by the within writ further commanded, I have also served the within writ on the said Bradford B. Stevens, by reading the same to him this day. Dated May the fourteenth, eighteen hundred and forty-four.

ROBERT HANNA, *Marshal.*
Per WM. STEWART, *Dep'y.*

And afterwards, to wit, at a circuit court of the United States for the circuit and district aforesaid, began and holden at Indianapolis, in said district, before the honorable judges aforesaid, on Monday, the twentieth day of May, in the year of our Lord one thousand eight hundred and forty-four, and continued until the twenty-first day of May aforesaid, when the plaintiff, by his said attorney, comes and files his declaration herein, in the words and figures following, to wit:

THE UNITED STATES OF AMERICA,
District of Indiana, ss:

In the United States circuit court, for the seventh circuit and district of Indiana, of the May term thereof, A. D. eighteen hundred and forty-four.

Edmund T. H. Gibson, who is a citizen of the State of New York, complains of Bradford B. Stevens, who is a citizen of the State of Indiana, defendant in this suit, in a plea wherefore he, the said defendant, wrongfully took, and unlawfully detained from the said plaintiff, the goods and chattels of the said plaintiff, against sureties and pledges, until, &c.

For that the said defendant, on the eighth day of May, A. D. eighteen hundred and forty-four, then and still being a citizen of the State of Indiana, in the county of Allen, at and within the district aforesaid, wrongfully took the goods and chattels, to wit, three hundred and fifty barrels of mess pork, and two hundred barrels of flour, of the said plaintiff, of great value, to wit, of the value of three thousand and six hundred dollars, and unlawfully detained the same, against sureties and pledges, until, &c., the said plaintiff then, and still being, a citizen of the said State of New York.

And for that, also, the said defendant, being a citizen of the State of Indiana aforesaid, and being lawfully in possession of certain other goods and chattels, to wit, other three hundred and fifty barrels of mess pork, and two hundred barrels of flour, of the said plaintiff's, of great value, to wit, of the value of three thousand and six hundred dollars, did, on the said eighth day of May, A. D. eighteen hundred and forty-four, in the said county of Allen, at and within the district of Indiana aforesaid, unlawfully detain the same from the said plaintiff, the said plaintiff then, and still being, a citizen of the State of New York, against sureties and pledges, &c ; whereupon the said plaintiff saith that he is injured, and hath sustained damages in the sum of one thousand dollars; hence he sues.

ZEBU. BAIRD, *For pl'ff.*

And day is given until the thirteenth day of May aforesaid, being the tenth judicial day of said term, continued and holden before the same honorable judges, at Indianapolis aforesaid, when the parties, by their attorneys, come and make the agreed case which elsewhere in this record appears, and submit the trial thereof to the court, without the intervention of a jury.

And the court take the case under consideration until next term; to which time the cause is continued.

And afterwards, to wit, at a circuit court of the United States for the circuit and district aforesaid, began and holden at Indianapolis in said district, before the honorable Elisha M. Huntington, district judge of the United States for the district of Indiana, on Monday, the eighteenth day of November, in the year of our Lord one thousand eight hundred and forty-four, and continued from day to day until the twenty-fifth day of November last aforesaid, when the parties, by their attorneys, come, and the court being now here ready to give their judgment herein, the said plaintiff prays the court to grant to him a reargument of the cause; and thereupon it is ordered, that this cause be continued until the next term of this court.

And afterwards, to wit, on the thirtieth day of November last afore-

said, being the twelfth judicial day of the November term, eighteen hundred and forty-four, continued and holden before the same honorable judge, at Indianapolis aforesaid, come the parties, by their said attorneys, and, on motion of plaintiff, he has leave to withdraw the letters written by him, dated 17th of April, eighteen hundred and forty-four, by leaving on file copies; which is done.

And thereupon the plaintiff files his reasons for a reargument of this cause; which are as follows, to wit:

1st. There is an error in the statement of facts; in this, that the statement of the cause in the opinion omits the formal warehouse receipt for the flour, executed by D. & J. A. F. Nichols.

2nd. There is an error in fact assumed in the argument, as follows: In the letters of Ludlow & Babcock, it is stated that Gibson had advanced money on two hundred barrels of flour, and twelve hundred barrels of pork.

The agreed case states that Gibson advanced specifically two thousand seven hundred and eighty-seven dollars and fifty cents on the flour, and on three hundred and fifty barrels of pork, which is a part only of the twelve hundred and fifty barrels, and the flour and pork in controversy in this suit. The advance on the remainder of the pork not appearing, the argument assumes, that the advance of two thousand seven hundred eighty-seven dollars fifty cents was made on the flour, and the whole twelve hundred and fifty barrels of pork, worth ten thousand dollars.

3rd. There is an omission in the statement of facts; in this, the agreed case states that the bank, with knowledge of the fraud, &c., levied the attachment on the goods, as the property of McQueen & McRay; this is omitted in the statement of the case by the court.

4th. There is an error in reference to the statute in this State, Revised Code of 1843, page 697. It is assumed that, by the statute, an action of replevin is not given to a person claiming a special interest in it, unaccompanied by possession.

5th. The argument waives altogether the question as to the effect of the election of the remedy by the bank in suing for debt, and thus affirming the contract, instead of suing for the proceeds of their money fraudulently obtained, and thus avoiding the contract.

6th. The argument assumes that there could not be a lien by the law of Indiana, on property in the hands of a warehouseman, until notice to him, and acceptance by him of the transfer, subject to amendment.

BAIRD & JUDAH, *For plff.*

And afterwards, to wit, at a circuit court of the United States, for the circuit and district aforesaid, began and holden at Indianapolis aforesaid, before the honorable John McLean, one of the justices of the Supreme Court of the United States, and the honorable Elisha M. Huntington, district judge, on Monday, the nineteenth day of May, A. D. eighteen hundred and forty-five, and continued from day to day until the twenty-eighth of May last aforesaid, when the parties came, and the court not being sufficiently advised in the premises, give the parties further day to hear their decision thereon, and the cause is continued.

And afterwards, to wit, at a circuit court of the United States, for the circuit and district aforesaid, began and holden at Indianapolis aforesaid, before the honorable Elisha M. Huntington, district judge, &c., on Monday, the seventeenth day of November, in the year of our Lord one thousand eight hundred and forty-five, and continued from day to day until the twenty-first day of November aforesaid, came the parties, and this cause is continued until the next term of this court.

And afterwards, to wit, at a circuit court of the United States, for the circuit and district aforesaid, began and holden at Indianapolis aforesaid, before the honorable John McLean, one of the justices of the Supreme Court of the United States, and the honorable Elisha M. Huntington, district judge of the United States for the district of Indiana, on Monday, the eighteenth day of May, in the year of our Lord one thousand eight hundred and forty-six, and continued from day to day until the twenty-sixth day of May aforesaid, when the parties come; and the court being sufficiently advised in the premises, do find for the defendant.

And it is therefore considered by the court now here, that the plaintiff take nothing by his said writ, but that he, and his pledges to prosecute, be in mercy, &c., and the *the* said defendant go hence, without day, &c., and that he have return of said property set forth in said plaintiff's declaration.

It is also considered by the court, that the said defendant recover against the said plaintiff the sum of eighty-six dollars and seventy-seven cents, his costs and charges by him laid out about the defence in this behalf, by the said court here adjudged to the said defendant, and that the said defendant have execution thereof.

And thereupon the plaintiff files in open court the following bill of exceptions, by him taken in this behalf, to wit:

In the United States circuit court, in the seventh circuit and district of Indiana.

EDWARD T. H. GIBSON, vs. BRADFORD B. STEVENS. } Replevin.

Be it remembered, that at the May term of said court, A. D. eighteen hundred and forty-four, the above cause was submitted to the decision of the court, without the intervention of a jury, upon the following agreed facts, to wit:

The parties mutually agree that the following are the facts in this case: that McQueen & McRay, citizens of the city of Detroit, State of Michigan, about the twentieth of March, eighteen hundred and forty-four, by false pretences, fraudulently procured the branch of the State Bank of Indiana, at Indianapolis, to loan to them the sum of about eleven thousand dollars. The money thus loaned consisted of notes of the Indianapolis branch of said State Bank of Indiana, payable to bearer, and transferable by delivery. With part of the money thus obtained, McQueen & McRay purchased of Hanna Hamilton & Co. three hundred and fifty barrels of mess pork, for the sum of two thousand

nine hundred eight dollars and fifty cents, and at the same time paid to the said Hanna Hamilton & Co. the said purchase money; and thereupon the said Hanna Hamilton & Co. executed and delivered to the said McQueen and McRay the memorandum of said purchase, receipt, and guarantee thereto appended; which are herewith filed and marked "A," and made a part of this agreement, and are in the words and figures following, to wit:

"FORT WAYNE, *April* 4, 1844.

"Messrs. McQueen & McRay,

"Bought of Hanna Hamilton & Co.

"350 barrels mess pork, to be delivered on board of canal boats soon after the opening of canal navigation, at 8 31 - - $2,908 50

"Received payment in full,

"HANNA HAMILTON & Co.

"We guarantee the inspection of the above pork at Toledo, and the delivery on board of canal boats at this place, soon after the opening of canal navigation.

"Fort Wayne, April 4, 1844.

"HANNA HAMILTON & Co."

The said barrels of pork were, at time of said sale *sale* to McQueen & McRay, lying in the warehouse of said Hanna Hamilton & Co., in the town of Fort Wayne, in the State of Indiana, about twenty feet from the Wabash and Erie canal, marked and branded "Mess Pork," together with a large number of other barrels of pork, marked and branded "Prime Pork," and "Clear Pork."

Said three hundred and fifty barrels being all the mess pork in said warehouse at that time, or at any other time since, and all the barrels marked "Mess Pork," but were not seen by McQueen & McRay. Said barrels of prime, clear, and mess pork, laid in said warehouse promiscuously, and so remained up to, and at, the time of the assignment of said writing marked "A;" but after the assignment, and before the levying the attachment hereinafter mentioned, said Hanna Hamilton & Co. had shipped off all of the said barrels of pork, marked and branded "Prime Pork" and "Clear Pork."

Said McQueen & McRay, at the same time purchased of D. & J. A. F. Nichols, of Fort Wayne, Indiana, two hundred barrels of superfine flour, for the sum of seven hundred and twelve dollars and fifty cents, and at the same time paid the said D. & J. A. F. Nichols the said purchase money; and thereupon said D. & J. A. F. Nichols executed and delivered to said McQueen & McRay a memorandum of said purchase, receipt, and guarantee, in the words and figures following, to wit:

"FORT WAYNE, *April 4th*, 1844.

"Messrs. McQueen & McRay,

"Bought of D. & J. A. F. Nichols.

"Two hundred barrels of superfine flour, at $3 56¼.

$712 50

"Received, Fort Wayne, April 4th, 1844, payment in full.

"D. & J. A. F. NICHOLS.

"Received the above flour in store, at Fort Wayne, April 4th, 1844, which we agree to deliver on board of canal boats here, soon after the opening of the navigation, subject to the order of McQueen & McRay.

"D. & J. A. F. NICHOLS.

"We guarantee the inspection of the above flour in New York as superfine flour.

"D. & J. A. F. NICHOLS."

Which are herewith filed and marked "B," and are part of this agreement. Said barrels of flour were, at the time of said sale, lying in the warehouse of said D. & J. A. F. Nichols, in the town of Fort Wayne, Indiana, on the bank of the Wabash and Erie canal, and there remained until they were seized and taken under the attachment hereinafter mentioned. Said purchases were both made in the town of Fort Wayne, in the county of Allen, in the said State of Indiana, on the fourth day of April, eighteen hundred and forty-four.

On the seventeenth day of April, eighteen hundred and forty-four, said McQueen and McRay presented the said memorandums of purchase, receipts, and guarantees thereto appended, as above set forth, and marked "A" and "B," to the said Gibson, in the city of New York, and requested of said Gibson an advancement upon the flour and pork therein mentioned; whereupon the said Gibson did advance to the said McQueen & McRay, on the faith of said flour and pork, and the evidences of title thereto, the sum of two thousand seven hundred eighty-seven dollars and fifty cents, and took from said McQueen & McRay an assignment of said memorandums of purchase, receipts, and guarantees, respectively, endorsed on the back of each in the words and figures following, to wit:

"Deliver the within two hundred barrels of flour to E. T. H. Gibson, or order.

"McQUEEN & McRAY."

"NEW YORK, *April* 17, 1844.

"Deliver the within 350 barrels of pork to E. T. H. Gibson, or order.

"McQUEEN & McRAY."

Which are also part of this agreement.

Said McQueen & McRay, at the same time, delivered to the said Gibson the original memorandums of purchase, receipts, and guarantees above set forth, and marked "A" and "B;" in whose possession they now remain.

At the same time McQueen & McRay wrote, signed, and delivered, to said Gibson, the letter which is herewith filed, marked "C," and made a part of this agreement; and is in the words and figures following, to wit:

"NEW YORK, 17*th April*, 1844.

"Messrs. LUDLOW & BABCOCK, *Toledo*.

"GENTLEMEN: We have this day received an advance from E. T. H. Gibson, esq., on the following lots of pork, which you will have the goodness to deliver to his order, and to comply with his instructions relative to the shipment, to wit:

365 barrels mess pork } From warehouse of Walker & Roger & Co.
225 do. prime do. }
11 do. mess do. from warehouse of Benbridge & Mix.
300 do. do. do. do. do. Hamilton & Williams.
350 do. do. do. do. do. Hanna Hamilton & Co.
200 do. flour, from warehouse of D. & J. A. F. Nichols.

"Respectfully, gentlemen, your obedient servants,

"McQUEEN & McRAY."

On the eighteenth day of April, eighteen hundred and forty-four, Gibson enclosed the letter above referred to in another letter written by himself, directed to Mott & Co., at Toledo, Ohio, and mailed the same on the said eighteenth day of April, eighteen hundred and forty-four, in the post office in the city of New York; which said letter, with the enclosure, said Mott & Co. received by due course of mail, and handed said enclosed letter, as requested by said Gibson, to Ludlow & Babcock, at Toledo, Ohio.

Said Gibson also, on the said eighteenth day of April, eighteen hundred and forty-four, mailed, in the post office in the city of New York, a letter written by himself, and directed to said Ludlow & Babcock, at Toledo, Ohio, which said Ludlow & Babcock received by due course of mail; which letter is herewith filed, marked "D," and made a part of this agreement; and is in the words and figures following, to wit:

"NEW YORK, *April* 17, 1844.

"Messrs. LUDLOW & BABCOCK, *Toledo, Ohio*.

"GENTLEMEN: I have this day made McQueen & McRay, of Detroit, an advance on twelve hundred and fifty-one barrels of pork, and two hundred barrels of flour, which is stored at different points on the line of the Wabash canal, and which they state is to be shipped to your care, and held by you at Toledo, until you receive instructions from them respecting it. They have given me an order on you for it, which I have sent to Mott & Co. I wish you to ship the pork and flour to me immediately on its arrival at Toledo, at the lowest possible rates of freight, and send me a B. of L. of the same. There is one lot of three hundred barrels of pork in Hamilton & Williams' warehouse, on which there is due from McQueen & McRay, on its arrival at your place, five hundred and fifty dollars, ($550 00.) This amount you may draw on

me for, so soon as I receive B. of L. of the pork. Let me hear from you by return mail respecting it.

"I remain truly and respectfully yours,

"E. T. H. GIBSON."

At the time of the assignment of said memorandums of purchases, receipts, and guarantees, said Gibson was a commission merchant in said city of New York, in the State of New York, and it was usual and customary for commission merchants, residing and doing business in the city of New York, to make advances on western produce, upon the assignment of the proper evidences of title thereto.

On the twenty-third of April, eighteen hundred and forty-four, said Gibson, having on that day learned that McQueen & McRay had suffered some of their bills to be protested for non-payment, despatched one William Hoyt to the town of Fort Wayne, aforesaid, to see to the shipping of said pork and flour; and the said Hoyt arrived at said town of Fort Wayne on the twenty-ninth day of April, eighteen hundred and forty-four, for that purpose, having in his possession the said writings marked "A" and "B."

At the time of the assignment of said writings marked "A" and "B," the said Wabash and Erie canal was navigable at, and from, the said town of Fort Wayne to the said town of Toledo.

On the twenty-seventh day of April, eighteen hundred and forty-four, a writ of attachment issued from the Allen circuit court, in the State of Indiana, in due form of law, at the instance, and in the name of the State Bank of Indiana, against the goods and chattels, lands and tenements, of the said McQueen & McRay, (William McQueen and James McRay;) which said writ of attachment, and all the proceedings in and about the issuing of the same, are admitted to have been regular; and the production of the same, and of the record thereof, is hereby waived.

The said writ was directed to the defendant in this suit, who then was, and still is, sheriff of said county of Allen, and came to his possession as such sheriff on the said twenty-seventh day of April, eighteen hundred and forty-four; on which said twenty-seventh day of April, eighteen hundred and forty-four, the sheriff aforesaid, by virtue of said writ of attachment, levied upon, seized, and took into his possession the said pork and flour described in said writings, marked "A" and "B," the return day of which said writ has not yet elapsed. And it is also agreed, that the proceedings of the said sheriff in executing the writ of attachment, were, in all respects, regular. (It is not, however, admitted by the plaintiff, that the property levied on was, at the time levied on, or at any time since, the property of the said McQueen & McRay, or that McQueen & McRay had an attachable interest therein.) And that the defendant shall have the full benefit of all the proceedings in the said attachment, in the same manner as though the record thereof was produced before this court. And it is further agreed, that the said sheriff kept and retained the possession of the said flour and pork, so levied on by said writ of attachment, until the same was replevied out of his possession, by virtue of the writ of replevin in this case. The said

writ of attachment was issued and sued out for the purpose of coercing the payment of the said money, obtained by the said McQueen & McRay, as above stated.

It is further admitted by the parties, that the said pork and flour are of the value mentioned in the affidavit of William Hoyt, now on file in this court, on which said writ of replevin was issued.

The said Ludlow & Babcock were, on the seventeenth day of April, eighteen hundred and forty-four, the forwarding merchants of the said McQueen & McRay, at Toledo, Ohio, one hundred and four miles from Fort Wayne; and that Mott & Co. were, on the same day, the forwarding merchants of said Gibson at same place, Toledo.

It was understood between the said Gibson and the said McQueen & McRay, at the time of said assignment of said writings marked "A" and "B," that the said Gibson should sell the said pork and flour, and after retaining his said advancement, and his legal commission, and interest and outlays, pay the remainder of the proceeds of said pork and flour to said McQueen & McRay, according to the usage and custom of commission merchants. The pork and flour mentioned in said writings, marked "A" and "B," and that levied upon by virtue of said attachment, and that replevied by virtue of said writ of replevin, in this cause issued, and purchased by McQueen and McRay with the money obtained from said bank, as aforesaid, are the same pork and flour, and not other or different. The said levy, seizure, or detention of said pork and flour happened at, and within, the county of Allen, in the State of Indiana; a legal demand was made before the commencement of this suit, and after the said levy, upon the defendant, by said Hoyt, as the agent of said Gibson, for the said pork and flour, and the said defendant refused to surrender the same. The said Gibson was, at the time of the commencement of this suit, and still is, a citizen of the State of New York, and the defendant a citizen of the State of Indiana.

The said advancement, so made by said Gibson, corresponds with the usual advancing rates of commission merchants in the said city of New York, at the time of said advancement.

The said writ of attachment was levied on the said property at the instance of the said branch of said State Bank of Indiana; and it was known to the State Bank of Indiana at the time of, and before, the levy of said writ of attachment, that the said loan had been procured from her said branch at Indianapolis fraudulently, by said McQueen & McRay, and that the said McQueen & McRay had invested the said money, so obtained in the purchase of said pork and flour, and that said attachment is still pending; and that the original bills on which said money was obtained, fell due after the levy under said attachment, and that none of said bills, on which said money was obtained, or any part thereof, have ever been paid, but were at maturity protested for non-payment.

It is also admitted, if the court should consider the circumstance legitimate, or material, which the defendant denies, that in eighteen hundred and forty-three the said McQueen & McRay, and said Gibson,

had a similar transaction in New York, in which the said McQueen & McRay acted with integrity, but with which the bank, or the other parties, had no connexion.

That, after the said submission, the said court continued the said cause from term to term until the present term of this court; and that, at the present term of this court, and on the eighth judicial day thereof, the said court, without being in possession of any proof or facts in the said cause, other than those set forth in said agreed case, rendered upon the said agreed state of facts the judgment elsewhere in this record to be found; to the rendering of which said judgment the plaintiff at the time, by his counsel, excepted, and prays that this, his bill of exceptions, may be signed and sealed by the court, [and] made a part of the record in this cause; which is accordingly done.

JOHN McLEAN, [L. S.]
E. M. HUNTINGTON. [L. S.]

CIRCUIT COURT OF THE UNITED STATES,
For the 7th judicial circuit and dist. of Indiana, ss:

I, Horace Bassett, clerk of said court, do certify, that the foregoing is a full, true, and complete transcript of the above entitled cause, remaining of record in my office.

In witness whereof, I have hereunto set my name, and affixed the [L. S.] seal of said court, at Indianapolis, this the 29th August, 1846.

HORACE BASSETT, *Clerk*.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judges of the circuit of the United States, for the 7th circuit and district of Indiana:

Because, in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court of the United States for the seventh circuit and district of Indiana, before you, between Edmund T. H. Gibson, plaintiff, and Bradford B. Stevens, defendant, a manifest error hath happened, to the great damage of the said Gibson, as by his complaint appears; and we being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said [L. S.] Supreme Court of the United States, this 27th day of May, A. D. 1846.

HORACE BASSETT,
Clerk of the U. S. cir. court, 7th circuit and dist. of Ia

Writ of error.

I allow a writ of error in this case.

JOHN McLEAN,
Justice Sup. Court U. S., 7th circuit.

UNITED STATES OF AMERICA, *ss:*

To Bradford B. Stevens, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the seventh circuit and district of Indiana, wherein Edmund T. H. Gibson is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the error in the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the said [L. S.] Supreme Court of the United States, this 27th day of May, A. D. 1846.

JOHN McLEAN,
Justice Sup. Court U. S., 7th circuit.

I acknowledge service of the within process, this 27th day of May, A. D. 1846.

BRADFORD B. STEVENS,
By the agent SPURRIER, *his attorney.*

Filed December 8, 1846.